IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

R.S.A. No. 241 of 1995

Decided on: May 22, 2007

Punnu and others **...Appellants.**

VERSUS

Gita Ram and another **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellants: **Ms. Devyani Sharma, Advocate.**

For the respondent: **Mr. G.D. Verma, Sr. Advocate, with Mr. B.C. Verma, Advocate.**

Surjit Singh, Judge (Oral)

Late Chandu, predecessor of the present appellants, who shall hereinafter be referred to as plaintiff, filed a suit for declaration that he was owner in possession of land measuring 3 Bighas, bearing Khasra No. 80, 87, 88, 161, 156 and 158, entered against Khewat Khatauni No. 9/11, as per entry in the Jamabandi for the year 1956-57, pertaining to Mauza Salogra, Tehsil & District Solan, hereinafter referred to as the suit land, and that the entries in revenue record showing the respondents / defendants as

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Whether reporters of Local Papers may be allowed to see the Judgment?

owners in possession were wrong, illegal and void and that these entries have been incorporated in favour of the respondents / defendants illegally and without any basis and that earlier to the change in the entries he (the deceased plaintiff) himself was recorded as owner in possession.

2. Respondents / defendants contested the suit and took the plea that they were owners in possession of the suit land and that the deceased plaintiff had managed to get himself recorded as tenant in respect of the suit land in some of the Jamabandis, i.e. Jamabandis for the years 1952-53, 1956-57 and 1964-65 in connivance with the revenue staff and that those entries being wrong, illegal and without any basis or foundation had been subsequently changed in their favour. Certain preliminary objections were also raised.

3. Trial Court held that the respondents / defendants were owners in possession of the suit land. Consequently the suit was dismissed. Appeal was filed against the decree of dismissal of the suit in the Court of the learned District Judge. That appeal was also dismissed. Deceased plaintiff Chandu then filed the present appeal in this Court, which was admitted on the following substantial questions of law:-

> "1. Whether the impugned judgment and decree is the result of mis-reading, mis-interpretation as well as mis-appreciation of the Ex. D/1, the entry made in favour of respondents for the first time in the year 1969-70?
>
> 2. Whether the impugned judgment and decree is the result of complete mis-reading, misinterpretation

and misappreciation of documents Exs. P-1, P-2, P-3 and P-5?

3. Whether the impugned judgment and decree is the result of non-consideration of the statements of PWs 1 to 3?

4. Whether the impugned judgment and decree is the result of non-consideration of change in entry, which occurred in 1964-65, that is too without any authority of law?"

4. I have heard the learned counsel for the parties and gone through the record.

5. All the four substantial questions of law, on which appeal was admitted, in fact pertain to the appreciation of evidence, i.e. the entries in revenue papers and the statements of the witnesses examined by the plaintiff. It is true that in the Jamabandis, copies Ext. P-1, for the year 1956-57, Ext. P-2, for the year 1960-61, Ext. P-3, for the year 1952-53, it is the predecessor of the appellants, who are recorded in possession of the suit land, but their status, as per these entries, is that of the tenants on payment of rent in kind, i.e. half of the produce from the land. These entries are apparently contrary to the pleaded version of the plaintiffs. The pleaded version is that the ownership of the land was given to the predecessor of the deceased plaintiff by the predecessor of the respondents / defendants in lieu of the services rendered by them and out of love and affection.

6. Learned counsel for the appellants submitted that the entries suggested that the land had been given to the predecessor of the appellants as tenants in lieu of the service rendered by them

as 'Kamis' (menials) and that with the passage of the H.P. Tenancy & Land Reforms Act, they acquired ownership rights.

7. The argument has been stated only to be rejected. Plea of tenancy had not been raised not only in the pleadings but also during the course of trial. PW-1 Sadh Ram, one of the sons of deceased plaintiff Chandu, who entered the witness box as attorney of the plaintiff, categorically stated that the land, in question, was not given to the ancestor of the plaintiffs for cultivation as tenants, but its ownership had been given to them because of the services rendered by them.

8. The entries, being contrary to what is alleged in the plaint and what was stated by the attorney of the plaintiff, while in the witness box during the course of trial, are not entitled to any presumption. Rather they are shown to be incorrect by the averments in the plaint and the testimony of witness Sadh Ram. If the entries in favour of the ancestor of the plaintiffs were incorrect, as demonstrated above, the change effected in the year 1964-65 in favour of the respondents / defendants, showing them as owner in possession, cannot be said to be illegal or void, particularly when the respondents / defendants are being recorded as owners of the suit land from the very beginning, that is to say, even in the Jamabandis Exts. P-1, P-2, P-3 and P-5, upon which the plaintiffs place reliance. Sadh Ram (PW-1) admitted that some other land was given the ancestor of the appellants for cultivation on 'Batai' basis, i.e. on payment of rent in kind, and that proprietary rights in respect of that land stand conferred upon them (the appellants).

9. As a result of the above discussion, all the four substantial questions of law, on which appeal was admitted, are answered against the appellants. Accordingly the appeal is dismissed.

May 22, 2007 (BC) **(Surjit Singh)**
Judge